MUNIANDY

v.

TAN PECK SOO & ORS.

HIGH COURT MALAYA, KUANTAN
LAMIN MOHD. YUNUS J
[CIVIL SUIT NO. 336 OF 1985]
29 DECEMBER 1989

CIVIL PROCEDURE: *Claim for malicious prosecution - Allegation that defendant's complaints were the basis for his arrest and detention - Complaints made out of spite and malice - Statements made by witnesses in criminal action - Whether there is immunity accorded - Public policy - Application by defendant to strike out action under O. 18 r. 19 Rules of the High Court 1980.*

The plaintiff alleges that in or about 1980 the defendants/appellants wrongfully procured the police to arrest him and take him into custody under the Emergency (Public Order and Prevention of Crimes) Ordinance. The complaints, alleges the plaintiff, were made out of spite and malice towards him and have caused him to suffer severe shock and mental anguish.

In the alternative, the plaintiff/respondent alleges that the defendant/appellants wrongfully and maliciously conspired and combined among themselves to cause injury to him. The defendants/appellants argued that the pleading did not disclose a reasonable cause of action.

This is an appeal to the Judge-in-chambers on the decision of the learned Senior Assistant Registrar dismissing the defendants/appellants application under O. 18 r. 19 of the Rules of the High Court 1980 to have the plaintiff/respondent's statement of claim struck out and his action dismissed.

Held:
There are serious questions both of fact and law to be determined which in their very nature can only be fully and satisfactorily dealt with in a proper trial.

[Appeal dismissed with costs.]

Cases referred to:
Marrinan v. Vibart & Anor. [1962] 3 All ER 380
Evans v. London Hospital Medical College & Ors. [1981] 1 All ER 715
C.C. Ng & Brothers Sdn. Bhd. v. Government of State of Pahang [1985] CLJ (Rep) 45

Ligislation referred to:
Rules of the High Court 1980, O. 18 r. 19

For the defendants/appellants - M. Pathmanathan; M/s. Yusuf Lee Pathma & Marbeck
For the plaintiff/respondent - H.S. Nijar (with Mohideen Abd. Kadir); M/s. Nijar & Nijar

JUDGMENT

Lamin Mohd. Yunus J:

This is an appeal to the Judge-in-chambers on the decision of the learned Senior Assistant Registrar dismissing the defendants/appellants' application under O. 18 r. 19 of the Rules of the High Court 1980 to have the plaintiff/respondent's statement of claim struck out and his action dismissed.

In his statement of claim the plaintiff/respondent alleges that in or about late 1980 the defendants/appellants wrongfully procured the police to arrest the plaintiff/respondent and take him into custody on the ground that, as asserted by the defendants/appellants then, the plaintiff was a member of a gang which was terrorising and intimidating the people at Cheroh Estate, Raub, Pahang and committing unlawful and violent acts. Acting upon the said complaints the plaintiff/respondent was arrested and detained by the police on 17 March 1981 and was only released on 14 May 1983 subject to restricted conditions until 14 May 1984. The said detention and restriction orders were made purportedly under the Emergency (Public Order and Prevention of Crimes) Ordinance No. 5 of 1969. The plaintiff/respondent alleges that the complaints by the defendants/appellants were made out of spite and malice towards the plaintiff/respondent. The plaintiff/respondent therefore claims that in the premises the defendants/appellants have caused the plaintiff/respondent to be wrongfully imprisoned and deprived of his liberty for a period of 3 years 1 month and 27 days and as a result he has suffered severe shock and mental anguish.

In the alternative the plaintiff/respondent alleges that the defendants/appellants in or about 1980 wrongfully and maliciously conspired and combined among themselves to cause injury to the plaintiff/respondent and accordingly in his statement of claim the plaintiff/respondent spells out the overt acts of conspiracy on the part of the defendants/appellants. The learned Counsel for the defendants/appellants argued that the pleadings did not disclose a reasonable cause of action and cited the case of *Marrinan v. Vibart & Anor*. [1962] 3 All ER 380. The plaintiff in this case was formerly a barrister and was disbarred on 2 July 1957. He brought this action claiming damages for conspiracy against the defendants who were police officers attached to the Crimes Investigation Department of New Scotland Yard. In his statement of claim the plaintiff alleged that between 2 July 1956 and 29 July 1957 the defendants conspired together with another person to injure the plaintiff and his reputation and standing as a barrister by making false and defamatory statements against him. Allegedly some of the statements were made to the Director of Public Prosecution and used as evidence in a criminal trial of *Blythe v. Rossi* and some in the nature of sworn evidence by the defendants before the same Criminal Court at the trial of the said same accused. Also some of the statement referred to were made at an inquiry concerning the plaintiff before the Masters of the Bench of his Inn. The plaintiff failed in his action and if I may cite the words of Lord Esher as appearing in the judgment of Seller LJ at p. 383:

> It is true that, in respect of statements made in the course of proceedings before a Court of justice, whether by Judge, or Counsel, or witnesses, there is an absolute immunity from liability to an action. The ground of that rule is public policy. It is applicable to all kinds of Courts of justice ...

Similarly in the case of *Evans v. London Hospital Medical College & Ors.* [1981] 1 All ER 715, the rule of absolute immunity was applied. In this case the statements were in the nature of a post-mortem report made by a pathologist and two toxicologists from the London Hospital Medical College and submitted to the Director of Public Prosecution and as a result of which the plaintiff was charged with the murder of her infant son. However at the trial the prosecution offered no evidence and the plaintiff was acquitted. The plaintiff brought an action against the pathologist, the two toxicologists and the hospital claiming damages for negligence in conducting the post-mortem and preparing the report and alternatively for malicious prosecution. On application by the defendants before the Masters, the plaintiff's claim was dismissed and the action was struck out as disclosing no reasonable cause of action on the grounds that:

(a) the claims for malicious prosecution failed because the defendants had not initiated the prosecution, and

(b) the defendants were covered by the absolute immunity rule from civil action accorded to witnesses in criminal proceedings in respect of his evidence and that immunity was extended to cover conduct or statements made prior to commencement of proceedings if it could fairly be said to be part of the investigation of a crime or possible crime for the purposes of a prosecution or possible prosecution.

In the instant case before me, the alleged statement or report by the defendants/appellants were made to the police purportedly for the purpose of effecting arrest and detention on the order of public officials under the Emergency (Public Order and Prevention of Crimes) Ordinance No. 5 of 1969. The plaintiff/respondent's arrest was not made with a view to prosecute him before a Court of law. It was done for the purpose of making an order of detention by the Minister. From the statement of claim in this case I find that there are serious allegations of facts and equally serious is a question of law such as whether the rule of absolute immunity from civil action can be extended to cover ministerial orders which are made with the view to securing public order, suppression of violence or the prevention of crimes of violence under the Emergency (Public Order and Prevention of Crimes) Ordinance No. 5 of 1969. In this regard I am constantly reminded of the inherent power at my disposal to dismiss an action summarily but I must at the same time without fail give due deference to the words of caution often time expressed by our superior Courts and for this I wish to recall the words of our Federal Court appearing in its judgment delivered by Seah FJ as he then was in the case of *C.C. Ng & Brothers Sdn. Bhd. v. Government of State of Pahang* [1985] CLJ (Rep) 45 at 49:

> In our judgment, this is not a proper time to consider these rival submissions when the inherent jurisdiction of the Court is invoked to strike out a writ and/or a statement of claim on the ground that it was an abuse of the process of the Court. The inherent power to dismiss an action summarily without permitting the plaintiff to proceed to trial is a drastic power. It should be expressed with the utmost caution (per Lord Diplock in *Tractors Malaysia Bhd. v. Tio Chee Hing*). In *Lawrence v. Norreys* Lord Herschell said words to the same effect that:
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> > It cannot be doubted that the Court has an inherent jurisdiction to dismiss an action which is an abuse of the process of the Court. It is a jurisdiction which ought to be very sparingly exercised and only in very exceptional cases. I do not think its exercise would be justified merely because the story told in the pleadings was highly improbable, and one which it was difficult to believe could be proved. In our opinion, the question posed before the learned Judge ought to be decided at the trial.

In the present case, as I have earlier indicated, there are serious questions both of fact and law to be determined which in their very nature can only be fully and satisfactorily dealt with in a proper trial. I therefore dismiss the appeal with costs.

Also found at [1990] 1 CLJ 525